

Senate Study Bill 3236

SENATE FILE _____
BY (PROPOSED COMMITTEE ON
JUDICIARY BILL BY
CO=CHAIRPERSON KREIMAN)

Passed Senate, Date _____ Passed House, Date _____
Vote: Ayes _____ Nays _____ Vote: Ayes _____ Nays _____
Approved _____

A BILL FOR

1 An Act relating to medical malpractice including insurance=
2 related matters and civil actions for personal injury or
3 death.
4 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:
5 TLSB 6441SK 81
6 rh/je/5

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1 1 Section 1. NEW SECTION. 147.140 EVIDENCE OF REGRET OR
1 2 APOLOGY.
1 3 In any civil action for personal injury or wrongful death
1 4 against any physician or surgeon licensed pursuant to chapter
1 5 148, osteopathic physician or surgeon licensed pursuant to
1 6 chapter 150A, or dentist licensed pursuant to chapter 153,
1 7 based upon the alleged negligence of the licensee in the
1 8 practice of that profession or occupation, any statement,
1 9 writing, affirmation, gesture, or conduct expressing apology,
1 10 responsibility, liability, sympathy, consideration,
1 11 condolence, or a general sense of benevolence that was made by
1 12 a physician or surgeon, osteopathic physician or surgeon, or
1 13 dentist to the patient, relative of the patient, or decision
1 14 maker for the patient that relates to the discomfort, pain,
1 15 suffering, injury, or death of the patient as a result of an
1 16 unanticipated outcome of medical care is inadmissible as
1 17 evidence of an admission of liability or as evidence of an
1 18 admission against interest.
1 19 Sec. 2. Section 515F.4, subsection 5, Code 2005, is
1 20 amended to read as follows:
1 21 5. The rates may contain a provision for contingencies and
1 22 an allowance permitting a reasonable profit. In determining
1 23 the reasonableness of the profit, consideration shall be given
1 24 to investment income attributable to unearned premium and loss
1 25 reserves. ~~Income from other sources shall not be considered.~~
1 26 Sec. 3. Section 515F.5, subsection 3, Code 2005, is
1 27 amended to read as follows:
1 28 3. Subject to the exception in subsection 4, a filing
1 29 shall be on file for a waiting period of thirty days before it
1 30 becomes effective, which period may be extended by the
1 31 commissioner for an additional period not to exceed fifteen
1 32 days if written notice is given within the waiting period to
1 33 the insurer or advisory organization which made the filing
1 34 that additional time is needed for the consideration of the
1 35 filing. Upon written application by the insurer, the
2 1 commissioner may authorize a filing which has been reviewed to
2 2 become effective before the expiration of the waiting period
2 3 or an extension of the waiting period. A filing is deemed to
2 4 meet the requirements of this chapter unless disapproved by
2 5 the commissioner within the waiting period or an extension of
2 6 the waiting period or in the case of a medical malpractice
2 7 insurance filing, when approved by the commissioner.
2 8 Sec. 4. NEW SECTION. 519B.1 DEFINITIONS.
2 9 1. "Claim" means a request for indemnification filed by a
2 10 health care provider.
2 11 2. "Closed claim" means a claim that has been settled or
2 12 otherwise disposed of, where the insurer has made all
2 13 indemnity and expense payments on the claim.
2 14 3. "Commissioner" means the commissioner of insurance or a
2 15 designee.

2 16 4. "Health care provider" means and includes a physician
2 17 and surgeon, osteopath, osteopathic physician and surgeon,
2 18 dentist, podiatric physician, optometrist, pharmacist,
2 19 chiropractor, or nurse licensed pursuant to chapter 147, a
2 20 hospital licensed pursuant to chapter 135B, and a nursing
2 21 facility licensed pursuant to chapter 135C.

2 22 5. "Medical malpractice insurance" means insurance
2 23 coverage against the legal liability of the insured and
2 24 against loss, damage, or expense incident to a claim arising
2 25 out of the death or injury of any person as the result of
2 26 negligence or malpractice in rendering professional service by
2 27 any health care provider.

2 28 Sec. 5. NEW SECTION. 519B.2 REPORT REQUIRED.
2 29 An insurer providing medical malpractice insurance coverage
2 30 to a health care provider or a health care provider who
2 31 maintains professional liability insurance through a self=
2 32 insurance plan shall file annually on or before March 15 a
2 33 report with the commissioner of all medical malpractice
2 34 insurance closed claims during the preceding calendar year.

2 35 Sec. 6. NEW SECTION. 519B.3 REPORT INFORMATION.

3 1 1. A report filed pursuant to section 519B.2 shall be in
3 2 writing and shall contain the following information regarding
3 3 each individual closed claim:

3 4 a. The name and address of the insured and the person
3 5 working for the insured who rendered the service which gave
3 6 rise to the claim.

3 7 b. Any specialty coverage of the insured.

3 8 c. The nature and substance of the claim.

3 9 d. The date and place of the incident giving rise to the
3 10 claim.

3 11 e. The name, address, and age of the claimant or
3 12 plaintiff.

3 13 f. The total indemnity paid categorized according to
3 14 whether the damages awarded were compensatory, or punitive.

3 15 g. The total allocated loss adjustment expenses paid.

3 16 h. The type of injury suffered by the plaintiff based upon
3 17 the following categories:

3 18 (1) Temporary emotional injury, including nervous system
3 19 injuries without physical injury.

3 20 (2) Temporary insignificant physical injury, including
3 21 lacerations, contusions, minor scars, and skin rashes.

3 22 (3) Temporary minor physical injury, including infections,
3 23 fractures, minor burns, missed or delayed diagnoses or
3 24 recoveries without complication, and hospital falls.

3 25 (4) Temporary major injury, including burns, retained
3 26 surgical material, and side effects from medication.

3 27 (5) Permanent minor injury, including loss of fingers and
3 28 loss of or damage to organs.

3 29 (6) Permanent significant injury, including hearing loss,
3 30 and loss of a limb, eye, kidney, or lung.

3 31 (7) Permanent major injury, including paraplegia,
3 32 blindness, loss of two limbs, and brain damage.

3 33 (8) Permanent grave injury including quadriplegia, severe
3 34 brain damage, and any injury requiring life care or with a
3 35 fatal prognosis.

4 1 (9) Death.

4 2 2. The report shall contain the following aggregate
4 3 information:

4 4 a. The number of insured health care providers and written
4 5 premiums, paid losses, earned premiums, and incurred losses
4 6 for such providers for the preceding year by medical specialty
4 7 classified according to the number of incidents, as follows:

4 8 (1) No incidents within the preceding five-year period.

4 9 (2) One incident within the preceding five-year period.

4 10 (3) Two incidents within the preceding five-year period.

4 11 (4) Three or more incidents within the preceding five=
4 12 year period.

4 13 b. If a verdict in a civil malpractice lawsuit has been
4 14 rendered in connection with a medical malpractice insurance
4 15 claim, the amount of the verdict shall be included in the
4 16 report filed pursuant to this section and shall provide
4 17 specific information as to whether the damages awarded were
4 18 compensatory or punitive.

4 19 c. Any other additional information as required by the
4 20 commissioner.

4 21 Sec. 7. NEW SECTION. 519B.4 PUBLIC RECORD == EXCEPTION.

4 22 A report prepared pursuant to this chapter shall be open to
4 23 the public, except that any identifying information of a
4 24 claimant shall remain confidential.

4 25 Sec. 8. NEW SECTION. 519B.5 APPLICABILITY.

4 26 As used in this chapter, "insurer" includes an insurance

4 27 company authorized to transact insurance business in this
4 28 state, an unauthorized insurance company transacting business
4 29 with an insured person in this state, a risk retention group,
4 30 an insurance company issuing insurance to or through a
4 31 purchasing group, and any other person providing insurance
4 32 coverage in this state. With respect to an unauthorized
4 33 insurer transacting business with an insured person in this
4 34 state, a surplus lines insurance broker or licensee
4 35 originating or accepting insurance in this state shall file a
5 1 report pursuant to this chapter.

5 2 EXPLANATION

5 3 This bill relates to medical malpractice, including
5 4 insurance-related matters and civil actions for personal
5 5 injury or death.

5 6 The bill relates to evidence of regret or apology made by a
5 7 physician or surgeon, osteopathic physician or surgeon, or
5 8 dentist in any civil action for personal injury or death. The
5 9 bill provides that in such a case, any statement, writing,
5 10 affirmation, gesture, or conduct expressing apology,
5 11 responsibility, liability, sympathy, consideration,
5 12 condolence, or a general sense of benevolence that was made by
5 13 such a licensee, to the patient, relative of the patient, or
5 14 decision maker for the patient that relates to the discomfort,
5 15 pain, suffering, injury, or death of the patient as a result
5 16 of an unanticipated outcome of medical care is inadmissible as
5 17 evidence of an admission of liability or as evidence of an
5 18 admission against interest.

5 19 The bill provides that in determining what a reasonable
5 20 profit is during the ratemaking process, the commissioner of
5 21 insurance is no longer restricted to considering only income
5 22 from sources other than investment income attributable to
5 23 unearned premium loss reserves.

5 24 The bill provides that in respect to a medical malpractice
5 25 insurance rate filing, the commissioner of insurance shall
5 26 approve the filing before the rate becomes effective. Current
5 27 law provides generally that a rate filing is deemed approved
5 28 unless disapproved by the commissioner of insurance within the
5 29 requisite 30-day waiting period or an extension of the waiting
5 30 period pursuant to Code section 515F.5.

5 31 The bill also relates to medical malpractice insurance
5 32 closed claim reporting by an insurer providing medical
5 33 malpractice insurance coverage in Iowa. The bill provides
5 34 that an insurer providing medical malpractice insurance
5 35 coverage to a health care provider and a health care provider
6 1 who maintains professional liability insurance through a self=
6 2 insurance plan shall file annually on or before March 15 a
6 3 report with the commissioner of insurance of all medical
6 4 malpractice insurance closed claims during the preceding
6 5 calendar year which shall contain certain individualized
6 6 information, including the name and address of the insured and
6 7 the person working for the insured who rendered the service
6 8 which gave rise to the claim, specialty coverage of the
6 9 insured, the nature and substance of the claim, the date and
6 10 place of the incident giving rise to the claim, the name,
6 11 address, and age of the claimant or plaintiff, the total
6 12 indemnity paid categorized according to whether the damages
6 13 awarded were compensatory or punitive, the total allocated
6 14 loss adjustment expenses paid, and the type of injury suffered
6 15 by the plaintiff based upon certain categories of injury.

6 16 The bill provides that the report shall contain certain
6 17 aggregate information, including the number of insured health
6 18 care providers, and written premiums, paid losses, earned
6 19 premiums, and incurred losses for such providers for the
6 20 preceding year by medical specialty classified according to
6 21 the number of incidents within the preceding five-year period.

6 22 The bill provides that if a verdict in a civil malpractice
6 23 lawsuit has been rendered in connection with a medical
6 24 malpractice insurance claim, the amount of the verdict shall
6 25 be included in the report filed pursuant to the bill and shall
6 26 provide specific information as to whether the damages awarded
6 27 were compensatory or punitive.

6 28 The bill provides that the commissioner of insurance may
6 29 require additional information in the report.

6 30 The bill provides that a report prepared pursuant to the
6 31 bill shall be open to the public, except that any identifying
6 32 information of a claimant shall remain confidential.

6 33 The bill provides that an "insurer" includes an insurance
6 34 company authorized to transact insurance business in this
6 35 state, an unauthorized insurance company transacting business
7 1 with an insured person in this state, a risk retention group,
7 2 an insurance company issuing insurance to or through a

7 3 purchasing group, and any other person providing insurance
7 4 coverage in this state. The bill provides that an
7 5 unauthorized insurer transacting business with an insured
7 6 person in this state shall also file a report pursuant to the
7 7 bill.
7 8 LSB 6441SK 81
7 9 rh:rj/je/5